

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 434 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANILAL VASHRAM GOHEL

Versus

STATE OF GUJARAT

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Appearance:

MR SURESH M SHAH for Appellant-Plaintiff

MR MUKESH A PATEL, AGP for Respondent No. 1

MR RATAN VARIAVA for MR DD VYAS for Respondent No. 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/06/98

ORAL JUDGEMENT

1. This second appeal has arisen from the judgment and decree of Extra Assistant Judge, Rajkot in Regular Civil Appeal No.10/79 dated 14th August, 1980 under which the judgment and decree of the Civil Judge, (S.D.), Rajkot in Regular Civil Suit No.1216/74 decided on 12th January, 1979 has been confirmed.

2. The plaintiff filed a civil suit for declaration that he is entitled to claim the pay scale of Rs.150-10-250 in pre-revised scale and Rs.195-320 in the revised pay scale with effect from 1-10-1961 and Rs.200-490 in the further revised pay scale of Sarela Pay Commission with effect from 1-10-1967 and that he is entitled to promotion to the post of Librarian w.e.f. 27th June, 1962 and for further declaration that the order issued by the Curator of Libraries, Gujarat State, Ahmedabad dated 29th August, 1977 is illegal, void and inoperative and for injunction to restrain the defendant from enforcing the order dated 29th August, 1979 against the plaintiff and to order the defendant to fix the pay scale of the plaintiff in the above revised pay scale and to direct the defendant to fix the seniority of the plaintiff w.e.f. from 17th July, 1959.

3. The plaintiff on formation of the State of Bombay on 1-11-1956 was absorbed as Junior Clerk and continued to serve as such till 17th July, 1959. He was appointed as Assistant Librarian by order of the Dy. Director of Education, Bombay State dated 11-11-1959. Thereafter, on formation of the State of Gujarat from 1-5-1960, the plaintiff continued to work as Assistant Librarian till 1-4-1963 and then on formation of the Panchayat he was deputed to the District Panchayat, Rajkot from 1-4-1963 as Assistant Librarian. It is not in dispute between the parties that in the office of District Panchayat, Rajkot, only sanctioned post was of Librarian and the post of Assistant Librarian was not there. It is also not in dispute between the parties that from the day on which the services of the plaintiff were placed on deputation to the District Panchayat, Rajkot, he was discharging duties of Librarian. It is also not in dispute that at one point of time the pay of the plaintiff was fixed in the pay scale of Rs.200-490 by the Administrative Officer, District Panchayat, Rajkot, but later on this order has been recalled by the Education and Labour Department, rejecting the claim of the plaintiff for the aforesaid pay scale on the ground that he is not having the requisite qualification to hold the post of Librarian. It is also not in dispute that later on the plaintiff was repatriated back to the Government and he retired from the Government services. So during the period for which the plaintiff remained on deputation with the District Panchayat, Rajkot he worked as Librarian. It comes on the record also that the plaintiff acquired necessary qualification prescribed for appointment to the post of Librarian in the year 1963 i.e. in that year he acquired the qualification of graduation and he obtained the certificate in Library

Science in 1960. Both the Courts dismissed the suit of the plaintiff.

4. In this second appeal, learned counsel for the appellant-plaintiff raised only contention that on the principle of 'equal pay for equal work', the plaintiff was entitled for the difference of salary in between the post of Assistant Librarian and Librarian for the period during which he worked in the District Panchayat, Rajkot.

5. Learned counsel for the respondent, on the other hand, contended that the appellant-plaintiff was never appointed on the post of Librarian and as such he is not entitled for the difference of salary also. It has further been contended that he was not promoted on the post of Librarian and lastly he was not deputed as Librarian but his deputation was only as Assistant Librarian and even if the post of Assistant Librarian was not there he cannot be granted difference of salary. Carrying this contention further, learned counsel for the respondent contended that even on the day on which the plaintiff was appointed as Assistant Librarian he was not possessing the requisite qualification for the said post. However, learned counsel for the respondent does not dispute that the day on which the plaintiff was sent on deputation to the District Panchayat, Rajkot he was possessing the requisite qualification prescribed for the post of Librarian.

6. I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

7. The basic facts that at District Panchayat, Rajkot the post of Assistant Librarian was not there and that the plaintiff has worked as Librarian and the District Panchayat, Rajkot has taken the work from him of Librarian are not in dispute. It is also not in dispute that the day on which the plaintiff was sent on deputation to the District Panchayat, Rajkot, he was possessing the prescribed requisite qualifications for the post of Librarian. It is true that the plaintiff was sent on deputation to District Panchayat as Assistant Librarian. It is also equally true that the plaintiff was neither appointed by direct recruitment or by promotion on the post of Librarian by the District Panchayat. So I find sufficient merits in the contention of the learned counsel for the respondent that the claim of the plaintiff for fixing of his pay in the pay scale of Rs.200-490 from the date he was appointed as Assistant Librarian or from the date he was sent on deputation to

District Panchayat has no merits. He cannot claim merely because of his working as Librarian, the status and the pay scale of Librarian but at the same time when the District Panchayat, Rajkot has taken the work from the plaintiff of a higher post for which he was also possessing the requisite qualification, I find sufficient justification in the contention of the learned counsel for the plaintiff that for the period during which he worked and discharged the duties of Librarian, he is entitled for difference of salary of these two posts. This claim of the plaintiff clearly attracts the principle of 'equal pay for equal work'. The matter would have been different where the plaintiff lacks the prescribed qualifications for appointment on the post of Librarian but as stated earlier it is not the case of the respondents. Merely on the ground that he was sent on deputation as Assistant Librarian, it cannot be taken against the plaintiff. Whatever may be the status of the plaintiff on the day on which he was sent on deputation, this Court cannot be oblivious of the fact that despite of the fact that he was sent on deputation as Assistant Librarian, the post of Assistant Librarian was not there in the District Panchayat, Rajkot and there the post was only of Librarian. Coupled with this fact, the plaintiff discharged the duties of Librarian and from him the District Panchayat, Rajkot has taken without any objection the work of Librarian. In the presence of these facts, I find merits in the claim made by the plaintiff before this Court.

No other point has been raised.

8. In the result, this appeal partly succeeds and the suit of the plaintiff is decreed in the manner that he shall be entitled for the difference of salary of the two posts i.e. of Assistant Librarian and that of Librarian for the period during which he worked on deputation in the office of District Panchayat, Rajkot. So far as the rest of claim of the plaintiff is concerned, I do not find any illegality in the judgments of the courts below. Parties are directed to bear their own costs.

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